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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 10/697,871 | 10/31/2003 | James Daniel Baldwin | 81305-4000 | 9023 |
| 28765 | 7590 | 05/13/2005 | EXAMINER | |
| WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006 | | | LUM VANNUCCI, LEE SIN YEE | |
| | | | ART UNIT | PAPER NUMBER |

3611

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,871

Applicant(s)

BALDWIN ET AL.

Examiner

Lee Lum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8 and 10-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) all is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. An Amendment was filed 3/22/05 in which Claims 6 and 9 were also cancelled, and Claims 25-32 added.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 10-13, 15-19, 21-25, 27-29, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugioka et al 5477936.

Re Claims 1-5, 7, 8, 10-13, 15-17, 29, 31 and 32, Sugioka discloses a scooter frame, depicted in **figs 28-33**, comprising

First frame portion comprising a plurality of welded struts 102-104, 118 (welded – depicted in fig 28, and in portions of reference),

A rear group of struts 104 and 118 formed as a unit to define an open rear wall,
And,

The frame portion comprising at least skin members 117 for closing at least 75%/portions of openings (unidentified) defined between the struts, the skin members comprising battery tray 112 (fig 30) for battery 115, and,
comprising a plurality of skin members 117, 119,

Second frame portion including components 103, 105, 119, separably associated with the first portion for substantially increasing its stiffness, and including

Plurality of struts 104a (fig 31, and c17, first complete paragraph) for stiffening the skin member and frame,

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Wherein the frame portions supporting a rider, and cooperatively define, and substantially enclose, an interior cavity (fig 28; cavity = area for battery) between the frame portions,

The cavity housing the battery, and comprising attachments 102, 109, 110, for supportedly connecting to front wheel 101, and unidentified rear wheel,

The frame portions permitting removal of the battery tray when the portions are separated, and,

Substantially enclose the top, front, and lateral sides of the cavity (i.e., via the second frame member 117.

Re Claim 18, the reference further discloses

The first frame portion as having an *inherent* longitudinal torsional stiffness, and the combination of the two portions as having an *inherent* assembled stiffness that is at least a factor of 1.2 more than that of the first frame portion.

Re Claims 19, 21 and 22, the reference further comprises

Seat (unidentified in fig 6),

Motor 191 (fig 33),

Suspension system, including front fork, rear shock 127, swingarm/pivotable power unit 108, connecting the wheels to the vehicle frame.

Re Claims 23 and 24, the reference discloses an electric vehicle comprising the recited elements/characteristics provided above.

Re Claims 25, 27 and 28, the reference further discloses the cavity

As having a volume of *at least about* 1000 sq in, to *at least about* 2500 sq in (fig 28), and,

Having a length of *about* 25 in (fig 28).

Re Claim 32, the reference further discloses

The first frame portion as comprising spaced longitudinal struts 104 (fig 31) on opposite sides of the cavity,

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And being supported on the wheels such that these struts are compressed (inherent), *as broadly interpreted*, and,

The second frame portion extends over and across the cavity (i.e., portions 117), and is associated with the longitudinal struts for increasing the stiffness thereof (inherent).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. Claims 14 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugioka in view of Stevenson et al 6047786, and Ono 5207288.

Sugioka does not disclose the struts as including aluminum/alloy, while Stevenson shows this material in c6, In 7-11, which is well-known to be weldable. While it is clear that the frame would include a material that will accommodate the vehicle and particular application, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include these materials, as shown in Stevenson, as types of materials with the requisite structural strength and durability.

The previous references do not disclose the second frame portion as comprising a skin member including composite, fiber-reinforced material, while Ono shows this material in c1, In 65-67. While it is clear that these components would comprise a material that would be appropriate for the vehicle and application, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this particular material, as shown in Ono, as one well-known type which has the requisite strength and durability for use in this vehicle.

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B. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sugioka.

The reference discloses the width of the cavity as *at least about* 6 in (fig 30), but does not disclose the height as at least about 15 in. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this dimension to accommodate this battery size, thus increase applicability. However, it is clear that the dimensions of the cavity are totally immaterial to the proper operation of the power source within the vehicle, and is clearly application-dependent.

C. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sugioka in view of Ono.

Sugioka does not disclose three wheels, while Ono shows this configuration in c1, ln 8. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this alternate embodiment, as shown in Ono, to provide increased balance for the vehicle and rider, and to increase applicability.

4. The prior art made of record, and not relied upon, is considered pertinent to the disclosure: Ogawa et al 5513721, 5421427.

5. RESPONSE TO REMARKS: Moot due to new rejections.

6. Communication with USPTO/Examiner

Any inquiry concerning this communication should be directed to Ms. Lum at 571 272 6649, M-F, 9-5. If attempts to reach the examiner are unsuccessful, her supervisor, Ms. Lesley Morris is at 571 272 6651. Our fax number is 703 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications: private PAIR only, for published applications: private or public PAIR. For more information re PAIR: <http://pair-direct.uspto.gov>. Questions re private PAIR: contact the Electronic Business Center (EBC) at 866 217-9197.

Ms. Lee S. Lum
Examiner
5/16/05

